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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT WALTER KING,

Defendant and Appellant.

H038501

(Santa Clara County

Super. Ct. No. C1197317)

Pursuant to a negotiated disposition, Robert King (defendant) pleaded no contest to one count of grand theft person (Pen. Code, § 487, subd. (c)), and one count of battery (Pen. Code, § 242, 243, subd. (a)). Defendant admitted that he had a prior strike conviction (robbery) within the meaning of Penal Code sections 667, subdivisions (b)-(i) and 1170.12. In exchange for his no contest pleas defendant was promised a four-year prison sentence.

On September 13, 2011, the court sentenced defendant to four years in state prison consisting of the midterm of two years on the grand theft count doubled because of the prior strike, plus a concurrent 60-day jail term for the battery conviction. Defendant filed a timely notice of appeal.

Defendant's appointed counsel has filed an opening brief in which no issues are raised and asks this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738.

On August 30, 2012, we notified defendant of his right to submit written argument on his own behalf within 30 days. That time has passed and we have not received a response from defendant.

Pursuant to *Wende, supra*, 25 Cal.3d 436, we have reviewed the entire record and have concluded there are no arguable issues on appeal. Pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, we provide "a brief description of the facts and procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed." (*Id.* at p. 110.)

The facts underlying defendant's convictions are unknown.

Proceedings Below

Defendant was charged by felony complaint with one count of second degree robbery, which was alleged to have occurred on January 13, 2011. (Pen. Code, §§ 211, 212.5.) The complaint contained an allegation that defendant had been convicted of a serious/violent felony within the meaning of Penal Code sections 667, subdivision (a) and 1192.7, which was also a strike prior within the meaning of Penal Code, sections 667, subdivisions (b)-(i) and 1170.12.

Thereafter, in open court the District Attorney moved to amend the complaint to add one count of grand theft person (Pen. Code, § 487, subd. (c)), and one count of battery (Pen. Code, § 242, 243, subd. (a)). As part of the plea bargain, the District Attorney moved to dismiss the robbery count and the prior serious felony conviction allegation.

Before entering his plea, defendant was advised of and waived his right to a preliminary examination and his constitutional rights to a jury trial, to present a defense, to confront witnesses and his right against self-incrimination. Further, he was advised of

the consequences of his plea, including immigration consequences, the maximum possible sentence in his case and the effect of his prior strike conviction.

As noted, the court sentenced defendant pursuant to the terms of his plea bargain. The court imposed various fines and fees and awarded defendant 366 days of custody credits (244 actual days and 122 days conduct credit).

After defendant was sentenced, he filed an ex parte motion to correct his presentence custody credits. In the motion, defendant argued that he was entitled to enhanced credits under an amendment to Penal Code section 4019. It appears that defendant was arguing that he was "retroactively" entitled to the enhanced credits provided by the January 2010 amendment to Penal Code section 4019, even though he committed his crime in January 2011 and was in custody after that date.¹ The court denied defendant's motion. The court explained that effective September 28, 2010, the Legislature amended Penal Code section 2933, subdivision (e) to provide that a defendant sentenced to state prison "shall have one day deducted from his or her period of confinement for every day he or she served in a county jail."² However, because

¹ Between January 25 and September 28, 2010, a defendant could accrue presentence conduct credit at a rate of two days for every two days spent in actual custody (sometimes called one-for-one credits) except for those defendants required to register as a sex offender, those committed for a serious felony (as defined in Pen. Code, § 1192.7), or those who had a prior conviction for a violent or serious felony. (Stats. 2009–2010, 3d Ex.Sess., ch. 28, §§ 50, 62.)

² At the time defendant committed his crimes Penal Code section 2933, subdivision (e)(1) provided "Notwithstanding Section 4019 and subject to the limitations of this subdivision, a prisoner sentenced to the state prison under Section 1170 for whom the sentence is executed shall have one day deducted from his or her period of confinement for every day he or she served in a county jail, city jail, industrial farm, or road camp from the date of arrest until state prison credits pursuant to this article are applicable to the prisoner." Nevertheless, subdivision (e)(3) of the same section provided, "Section 4019, and not this subdivision, shall apply if the prisoner is required to register as a sex offender, pursuant to Chapter 5.5 (commencing with Section 290), was committed for a serious felony, as defined in Section 1192.7, or has a prior conviction for a serious felony, as defined in Section 1192.7, or a violent felony, as defined in Section 667. 5." (Stats. 2010, ch. 426, § 1, eff. Sept. 28, 2010.) This was a short-lived amendment to

defendant had a prior conviction for a serious felony, and he committed his crime in January 2011, the September 2010 amendment to Penal Code section 4019 applied;³ and that amendment returned "the credit accrual rate to that which existed before the previous amendment of January 25, 2010." That is conduct credits accrued at the rate of two days for every four days in actual custody; thus defendant was entitled to 122 days of conduct credit, which, as noted, is the number of days of conduct credit defendant was awarded.

Upon our independent review of the record, including the denial of defendant's motion for enhanced conduct credits, we conclude there are no meritorious issues to be argued, or that require further briefing on appeal. The sentence imposed was consistent with the plea bargain. The restitution fine and fees and assessments imposed were supported by the law and facts. Defendant's conduct credit award was supported by the law in effect when he committed his crimes. At all times appellant was represented by competent counsel.

Disposition

The judgment is affirmed.

Penal Code section 2933. (Repealed by Stats. 2011, 1st Ex Sess., ch. 12, § 16, eff. Sept. 21, 2011.)

³ Statutes 2010, chapter 426, section 2, effective September 28, 2010.

ELIA, Acting P. J.

WE CONCUR:

BAMATTRE-MANOUKIAN, J.

MÁRQUEZ, J.